

REMARKS

This Response is in reply to the Final Office Action mailed on February 16, 2006. Claims 1-22 are pending. No new matter has been added. Applicant appreciates Examiner's indication that claims 21 and 22 are allowed, and that claims 2-4 and 6-12 would be allowable if not for their dependence from a rejected base claim. Consideration of the following remarks is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 1, 5, and 13-20 stand rejected under 35 U.S.C. § 103(a) as obvious over Burch (U.S. patent no. 3,276,428) in view of Orendorff et al. (U.S. patent no. 6,415,739). This rejection is respectfully traversed.

In order to rely on a reference under 35 U.S.C. 103(a), the reference must be analogous prior art (MPEP 2141.01(a)(I)). Prior art is considered analogous if it is either (1) in the field of applicant's endeavor, or (2) reasonably pertinent to the particular problem with which the inventor was concerned. (*In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)). The two references relied upon by the Examiner are neither in the field of applicant's endeavor, nor are they reasonably pertinent to the particular problem with which the inventor was concerned.

The claimed invention is a dispenser for dispensing materials. In contradistinction, both Burch and Orendorff relate to fish tanks. A fish tank is not a dispenser and, therefore, the references cited by the Examiner are not in the applicant's field of endeavor.

Additionally, neither reference is reasonably pertinent to the particular problem with which the inventor was concerned. A stated object of the present invention is to provide a dispenser for holding media with easily detachable frames that can be changed to enhance the appearance of the dispenser (Specification: p. 2, lines 4-6). The Burch reference deals with providing a wall-mounted aquarium (col. 1, lines 21-35), while the Orendorff reference relates to combining a fish tank with a recessed picture frame (col. 1, lines 6-9). Accordingly, neither reference is pertinent to the particular problem concerning the inventor, namely a dispenser for holding media with easily detachable frames that can be changed to enhance the appearance of the dispenser.

In view of the above, neither Burch nor Orendorff can be used as prior art references in connection with the claimed invention, since they are not analogous art. Accordingly, it is respectfully requested that the Examiner withdraw the rejection of claims 1, 5, and 13-20.

In the alternative, even if we assume, *arguendo*, that Burch and Orendorff are analogous art, the combination of the two references would still fail to teach all the elements of the claimed invention. Claim 1 recites a dispenser for dispensing materials, including a container for holding the material to be dispensed; a plurality of frame portions for holding decorative items; a locking means for locking said frame portions to the container; and a dispensing means for dispensing said materials from said container. The Examiner has conceded that Burch fails to teach a dispensing means for dispensing said materials from said container (pending office action p. 2). However, the Examiner maintains that Orendorff teaches a dispensing means and cites the drain plug shown in Fig. 3 (#44) of Orendorff. Applicant respectfully disagrees.

A drain plug is not a dispensing means. A drain plug is used to evacuate contents from a container. In contradistinction, a dispensing means is used to “deal out in parts or portions; distribute” (American Heritage Dictionary definition of “dispense”). Mere removal of water from a fish tank is, therefore, not equivalent to dispensing a product, such as perfume. The drain of the fish tank is not intended to deal out in portions or distribute the contents of the fish tank. Furthermore, the claimed invention is a dispenser. A fish tank is not a dispenser. The American Heritage Dictionary defines dispenser as “one that dispenses or gives out, especially a machine or container that allows the contents to be removed and *used in convenient or prescribed amounts.*” The contents of a fish tank are not intended to be removed and used in prescribed amounts. Accordingly, neither Burch nor Orendorff, either alone or in combination, teach or suggest the claimed invention. It is respectfully requested that the rejection be withdrawn and the application be put into condition for allowance.


CONCLUSION

In view of the arguments presented above, it is submitted that the Examiner's rejections have been overcome and should be withdrawn. The application should now be in condition for allowance.

Should any changes to the claims and/or specification be deemed necessary to place the application in condition for allowance, the Examiner is respectfully requested to contact the undersigned to discuss the same.

This Response is being timely filed. In the event that any other extensions and/or fees are required for the entry of this Amendment, the Patent and Trademark Office is specifically authorized to charge such fee to Deposit Account No. 23-2820 in the name of Wolf, Block, Schorr & Solis-Cohen LLP. An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,
WOLF, BLOCK, SCHORR & SOLIS-COHEN
LLP.

By: 
Noam R. Pollack
Reg. No. 56,829

Wolf, Block, Schorr & Solis-Cohen LLP
250 Park Avenue, 10th Floor
New York, New York 10177
(212) 986-1116